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AN EXPLORATION
OF
THE LIMITS OF FREEDOM OF CONTRACT

Michael J. Trebilcock
Faculty of Law
University of Toronto

rev. August 30, 1990

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PREFACE

This little book is an attempt to integrate a range of different interests that I have pursued as a teacher and scholar over the past number of years. As a law and economics scholar, I am interested in testing critically the extent of the commitment that neo-classical economists conventionally express in favour of the market and the exchange process as methods of allocating resources in preference to collective methods of allocation. As commercial and contract law scholar and teacher, I am interested in how legal doctrines in these areas square with this economic predilection and whether they reveal a range of other values at play that are systematically overlooked or depreciated in the standard economic paradigm. As a sometime teacher and scholar in the anti-trust (competition policy) area, I am have been interested in when voluntary arrangements in the private sector should be legally constrained because they reflect an abuse of that market power. For someone who has been taught and written in the international trade law area, and is currently working on a study of the history of Canadian immigration policy, I have been puzzled over the years as to why many people take a different attitude toward resource and individual mobility across international boundaries than they do with respect to the same kinds of movements within national boundaries. As a sometime teacher and writer in the area of public choice theory and governmental regulation, I have been interested in the counterpart of private market failures - the concept of government failure as a result of systematic biases and deficiencies in our collective decision-making processes that suggest that simply because markets are not working perfectly, one should not assume that government intervention will make things better. On the other hand, as someone who briefly taught social

welfare law and policy a number of years ago and who more recently has served on the board of directors of a local philanthropy with major concerns in the area of family and children's issues, I am sensitive to a set of values and functions that only governments are likely to be able to vindicate. This book is an attempt to show how a number of these areas and issues inter-relate with one another. The purpose of the exercise is in part to persuade myself that my diverse interests do not reflect simply self-indulgent dilettantism but have some essential coherence to them, and in part to persuade more sceptical colleagues that this indeed so. While the transformation of Eastern Europe and the Soviet Union has been heralded in some quarters as the triumph of economic and political liberalism, I believe that the issues I raise in this book suggest that even if this claim is true, we will continue to confront a range of formidable normative issues in resolving the fundamental but often competing values that any civilized and compassionate society is likely simultaneously to espouse.

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